Supreme Court, U.S.
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No. (1)

IN THE

Supreme Court of the United States

Ray Wolfgang,

Petitioner

v.

City of Pittsburgh Department of Personnel & Civil Service Commission,

Respondent

On Petition for a Writ of Certiorari
To the Supreme Court of Pennsylvania
Western District

PETITION FOR A WRIT OF CERTIORARI

Ray Wolfgang, pro se
1702 Meadville Street
Pittsburgh, PA 15214
412-322-0548

QUESTIONS PRESENTED

1. Being denied the opportunity for a complete Civil Service Commission hearing, to present material evidence and establish a full and complete record, can the Commission's February 2, 2006 dismissal of Wolfgang's appeal, seeking to enforce reinstatement to his Civil Service job with full back pay, be sustained?

2. Whether the Supreme Court of Pennsylvania, having previously found that Wolfgang is entitled to proceedings consistent with the Court's decision in Sadowski v. City of Pittsburgh, [741 A.2d 180 (Pa. 1999) sustaining Sadowski's reinstatement to position with full back pay], may now deny Wolfgang's Petition for Allowance of Appeal from the lower Court's decisions dismissing his appeal which seeks to enforce his job reinstatement with full back pay?

3. With respect to First Amendment protections, Is Wolfgang due award of back pay, reasonable expenses and attorney fees, reinstatement of fringe benefits including pension, reinstatement of seniority rights, and reinstatement to employment with the City of Pittsburgh; and what is the proper calculation for each of these elements?

4. Was the Pennsylvania Court System within its right to, avoid review of, and not provide a ruling

with respect to Wolfgang's claims for remedies available under provisions of the whistle blower law, municipal pension law, 42 US Code 1983 and 1988, and First Amendment infringements?

5. Does the City of Pittsburgh Department of Personnel & Civil Service Commission's frequent and ongoing failure to reinstate Wolfgang to job vacancies in accordance with the civil service law constitute ongoing acts of retaliation?

PARTIES TO THE PROCEEDING

Petitioner is:

Ray Wolfgang, pro se
1702 Meadville St.
Pittsburgh, PA 15214
412 322 0548

Respondent is:

City of Pittsburgh Department of
Personnel & Civil Service Commission
Fourth Floor City-County Building
414 Grant Street
Pittsburgh, PA 15219
412 255 2613

*In accordance with Rule 29. 4. (c), the Pennsylvania Office of Attorney General, Tom Corbett, 16th Floor, Strawberry Square, Harrisburg, PA 17120, telephone 717 787 3391 has been notified

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3. Decision of Civil Service Commission of the City of Pittsburgh denying reopening the record Jan. 31, 1992

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5. Opinion and Order of the Court of Common Pleas of Allegheny County, Nov. 14, 1995, SA 986-92, SA-3284 of 1991, G.D. 92-6181, SA 92-192 and SA 92-193, affirming Civil Service Commission denial of appeal, dismissing appeal and denying consolidation of cases

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7. Decision of Commonwealth Court of Pennsylvania denying application for re-argument, Aug. 23, 1996, No. 3566 C.D. 1995

8. Oct. 3, 2000 Order of the Supreme Court of Pennsylvania, 563 Pa. 188, 758 A.2d 1178, (2000), No. 0676 W.D. Alloc. Docket 1996, 563 Pa. 188, 758 A.2d 1178 (2000), reversing the June 20, 1996 Commonwealth Court Order of June 20, 1996 and remand to the trial court for proceedings consistent with Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999)

9. Order of Court of Common Pleas of Allegheny County, Dec. 17, 2002, No. S.A. 92-986, assigning case to Folino, J., for disposition in accordance with Supreme Court Order of Oct. 3, 2000

10. Order of Court of Common Pleas of Allegheny County, Dec. 18, 2002, S.A. 92-986, setting status conference

11. Order of Court of Common Pleas of Allegheny County, Jan. 17, 2003, ordering discovery and status conference, S.A. 92-986

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37. May 26, 2005 directive of City of Pittsburgh Civil Service Commission concerning availability of personnel file, S.A. 92-986

38. July 18, 2005 directive of City of Pittsburgh Civil Service Commission concerning availability of an "employee handbook", due date of Position Papers and scheduling of continuance of the hearing, S.A. 92-986

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55. April 27, 2004 directive by the City of Pittsburgh Law Department Attorney and Municipal Pension Fund Solicitor requiring litigation with City be resolved prior to Wolfgang's pension eligibility determination, S.A. 92-986

56. April 23, 2004 determination by the City of Pittsburgh Department of Law that Wolfgang is not due a City pension, S.A. 92-986

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58. January 24, 2006 determination by the city of Pittsburgh Municipal Pension Fund requiring direction from the City's Law Department to enable assisting in pension application and calculation of pension benefit, S.A. 92-986

59. November 2, 2000 ORDER OF COURT of the Court of Common Pleas of Allegheny County, Elaine Sadowski v. City of Pittsburgh, No. SA 96-260.

60. April 18, 1994 ORDER OF COURT of Common Pleas of Allegheny County affirming the March 19, 1992 Civil Service Commission of denial of Appeal, S.A. 986-92, filed April 25, 1994.

61. Certified Order of Commonwealth Court dated February 27, 1995, remanding to the Court of Common Pleas, S.A. 986-92

JURISDICTION

The order of the Supreme Court of Pennsylvania Western District, which denied Petition for Allowance of Appeal, entered on July 18, 2007 and the precedent decisions of the Commonwealth Court, February 20, 2007, and the Court of Common Pleas of Allegheny County July 27, 2006 affirmation of the City of Pittsburgh Civil Service Commission February 2, 2006 determination stemming from the Pennsylvania Supreme Court's October 3, 2000 Order are included for review, (see Appendix Section i, pp 11-64). The jurisdiction of this Court is invoked under 28 U.S.C., 1257(a), and Rule 10 (b) and (c). 28 U.S.C., 2403 (b) regarding the Constitutionality of Pennsylvania laws may apply and as such the Office of Attorney General of the State of Pennsylvania has been notified in accordance with Rule 29. 4. (c).

CITATION OF THE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED (see Appendix Section v. [1(f)], pp 68-76 for verbatim text)

A. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1423. Protection of employees

B. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424. Remedies

C. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69 Chapter 25, 43 P.S. 1425. Enforcement

D. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1)

E. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1)

F. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, RULES OF THE CIVIL SERVICE COMMISSION CITY OF PITTSBURGH

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I. 42 United States Code, TITLE 42—THE PUBLIC HEALTH AND WELFARE, CHAPTER 21—CIVIL RIGHTS, SUBCHAPTER I—GENERALLY, Sec. 1988, Proceedings in vindication of civil rights
(b) Attorney's fees

J. The United States Constitution, First Amendment

K. The United States Constitution, Fourteenth Amendment, Section 1.

L. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23582 Section 2.

M. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581 Section 1. Definitions.

N. City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581et seq.

O. General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S., Rules of the Civil Service Commission, Rule XI, Section 7.

P. Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424. Remedies, (d)

STATEMENT

(see Appendix Section v. [1(g)(i)], pp 77-115 for summary of the federal questions raised and how they were passed on by each court)

Wolfgang was a sixteen year employee of the City of Pittsburgh in 1991 when he made reports of wrongdoing by the Municipal Pension Fund Board.[1] The wrong doing was costing the Pension Fund nearly $1 million per year.[2] [These reports were later confirmed by the Pennsylvania Auditor General's Audit, for the period January 1, 1990 to December 31, 1991 which was released August 7, 1992, p.51, "Finding No. 3-Improper Early Retirement Window"][3]. Subsequent to Wolfgang's reports of wrong doing he was unlawfully terminated under authority and signature of the Mayor, on October 2, 1991, from his job as Project Engineer. The Mayor had motive to silence Wolfgang because the improperly enhanced pensions which Wolfgang had reported were being approved to only particular groups or particular individuals that the Mayor's administration selected.

As a Project Engineer in the non-competitive class Wolfgang enjoyed the expectation of continued employment and thus property rights to his Civil Service protected job, the protections afforded by the General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23431 et seq., and the Whistleblower Law, Act of

December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1421 et seq., relating to the highest form of protection offered by the First Amendment of the United States Constitution regarding speech. Wolfgang's unlawful termination was carried out under the pretext of an economy reduction. Wolfgang had the most years of seniority of all Project Engineers as well as specific departmental seniority over various others, but he was the only Project Engineer terminated. At the time there was active Project Engineer job postings for which Wolfgang applied, and the City accepted his application October 7, 1991, (R.R. 88).[4] Wolfgang appealed his termination to the City of Pittsburgh Civil Service Commission which conducted hearings on November 12, and 26, 1991. At the hearings Wolfgang brought forth the issue of political firing as result of him raising questions about the legality and use of pension money.[5] (R.R. 82-83)

On December 19, 1991, just 78 days after Wolfgang's first unlawful termination, Wolfgang was removed from his second paid City job as one of two Elected Employee Representatives on the Municipal Pension Fund Board. The Pension Fund and its Board are organized under the provisions of the Pension Act, City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23582, (Section 2), Administration. Wolfgang had just been re-elected, December 4, 1991, to a four year term to begin January 1, 1992. The Mayor's pretext for personally sponsoring the resolution for Wolfgang's

removal from his paid Pension Board job was that he has not been an employee since October 2, 1991.[6] However, Wolfgang was an employee, in his paid job as employee representative on the Pension Board, under the definitions in the City of Pittsburgh Municipal Pension Fund Act, 1975, August 1, P.L. 169, No. 87, 53 P.S. 23581, Definitions, (Section 1), and he was receiving regular remuneration each two week pay period with deductions for income tax, City and School tax, F.I.C.A., and Pension.[7] This removal was a premeditated display of blatant retaliation orchestrated through the personal efforts of the Mayor who read from a prepared sheet containing the resolution.

Subsequently Wolfgang filed timely suits, with the Court of Common Pleas of Allegheny County at SA-3284 OF 1991, G.D. 92-6181, SA92-192, and SA 92-193, regarding whistleblower matter and his removal from his paid position on the Pension Board.

Wolfgang's appeal from unlawful termination under the General Civil Service Law, and companion complaints regarding violation of the Whistle Blower Law and its components relating to infringement on Constitutional guarantees regarding speech and due process, and the City of Pittsburgh Municipal Pension Fund Act, proceeded through the Pennsylvania Courts.[9] On September 23, 1996 Wolfgang Petitioned for Allowance of Appeal to the Pennsylvania Supreme Court. Question 1.G. of the Petition asked, "was the decision made under due

process..." and regarding abolishment of Wolfgang's position, "that the abolishment was mere pretense or subterfuge." Question 2. asked "with respect to the Commonwealth Court's nondetermination of specific whistle blower law claim as, "a question which is not before us", ...and as affecting the highest form of Constitutional speech?"

October 3, 2000 the Pennsylvania Supreme Court, 563 Pa.188, 758 A.2d 1178, (2000), granted Petition for Allowance of Appeal, Reversed the Commonwealth Court's denial of Wolfgang's appeal and Remanded the case to the trial Court for proceedings consistent with the Court's decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999). In Sadowski the Court upheld the Court of Common Pleas March 14, 1997 ORDER, at S.A. 260 of 1996, reinstating Sadowski to her position with full back pay.

In spite of the October 3, 2000 Supreme Court Order, for proceedings consistent with Sadowski, the City of Pittsburgh did not reinstate Wolfgang. The City also failed many times to reinstated Wolfgang as required, [by General Civil Service Law, Act of May 23, 1907, P.L. 206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1), last sentence of "second" paragraph], to vacancies in positions in the former job class from which Wolfgang had been unlawfully terminated. The City repeatedly appointed new appointees to vacancies in the positions of Project Engineer and Project Manager

without first reinstating Wolfgang. Wolfgang was qualified for Project Engineer and Project Manager, both of which are in the non-competitive class, and for which Wolfgang was on eligibility lists as a qualified candidate.[10]

Nor did the City make back pay recompense.

On April 22, 2002 and June 5, 2002 the Municipal Pension Fund issued written calculation of the pension benefit which Wolfgang would be entitled upon attaining age 50.[11]

On September 9, 2002 Wolfgang filed Complaint in Mandamus, in the Court of Common Pleas of Allegheny County, seeking to enforce his reinstatement, with full back pay, interest and emoluments appertaining thereto. On April 17, 2003 the Court of Common Pleas of Allegheny County held the Complaint in Mandamus in abeyance and remanded the matter to the Civil Service Commission for determination.

The Civil Service Commission conducted an initial hearing in the matter on September 11, 2003.

Upon Wolfgang attaining age 50 in January 2004 the Municipal Pension Fund and City Law Department issued administrative determinations blocking Wolfgang from receiving the reduced early retirement pension benefit he was due. A February 10, 2004 determination by the Pension Fund solicitor

required "As to the availability to reinstate your pension, it is a condition precedent that you be employed by the City. Until you have confirmed your employment status, it would be premature to discuss with you the manner in which you can reinstate these benefits." Additional determinations, including directions given at a July 15, 2004 meeting of the Pension Board, indicated that the Pension fund could not do anything until Wolfgang's employment status/reinstatement is validated by the City Law Department.[12] [see position paper EXHIBIT FF pp. 9-10, 12, 13, 15, 17, 20-23 of the July 15, 2004 Pension meeting transcript]

The Civil Service Commission resumed hearings on May 12, 2005 and July 15, 2005 as well as setting a procedural plan that would include additional hearing after the parties submitted "Position Papers" outlining the testimony and evidence anticipated to be forthcoming during that future hearing.[13 & 14 & 15] [City Reproduced Record pp 322-323], [City Supplement to the Reproduced Record pp 252-255], and [the July 18, 2005 directive of the City of Pittsburgh Civil Service Commission stating: "The Commission declined to schedule a continuance of the hearing until after they receive and review the position papers. You will be properly notified of the hearing continuance date."]

After Wolfgang timely submitted his "Position Paper" on August 12, 2005 he regularly requested resumption of the hearing as previously outlined by

the Commission in prior proceedings. The "Position Paper" revealed the evidence in hand as well as the additional testimony and documents to be obtained at the upcoming Civil Service hearing. The "Position Paper" included calculations and summation of each two week pay amount withheld as result of his unlawful termination, including benefits and interest, back to the October 2, 1991 termination date. The total projected through January 1, 2006 is $2,215,341. Out of pocket expenses, pension benefit and reasonable fees for the periods of time during which Wolfgang was represented by attorneys were itemized in the claim for damages,[16] [pp 43-45 of the "Position Paper"]. Wolfgang also sought the Civil Service Commission's public records which would reveal each incident where new appointees had been appointed to Project Engineer or Project Manager positions instead of reinstating Wolfgang,[18] [Exhibit EE of the "Position Paper"]. These records are to be open to public inspection in accord with the General Civil Service Law, Section 21 and the Commission's own Rule XVII, Section 1; but were never provided.

Testimony and evidence from City experts in the Department of Personnel and Civil Service Commission to establish, on the record, the absence of restriction which would prohibit Civil Service employees from holding a second job and earning pay and benefits on that second job was also sought. Wolfgang anticipated testimony that these second job earnings and benefits are not deducted from any other Civil Service employee pay checks,[17] [page 33,

item 1, of the "Position Paper"]. The City of Pittsburgh civil service system is a complete and exclusive system apart from the exempt system set by City Code.

The basis of the claims, in the "Position Paper" were premised on the protections and remedies authorized in the General Civil Service Law, the Whistle Blower Law, and the First and Fourteenth Amendments to the United States Constitution.[19] The issues relating to these Laws were first raised at the Civil Service Commission and Court of Common Pleas of Allegheny County in 1991 and 1992 and carried through to the September 23, 1996 Petition for Allowance of Appeal to the Pennsylvania Supreme Court, who granted the Petition October 3, 2000, reversed the lower court and remanded to the trial court.

By letter dated February 8, 2006 the Civil Service Commission issued its February 2, 2006 FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER. The Commission concluded: "We find that Mr. Wolfgang did not experience any damages and accordingly dismiss his appeal."
The Commission did this without completing the hearing as they had previously set forth plans.[20] [appellants Notice of Appeal at court of common pleas, p 4 and 6/26/2006 City's Supplement to the Reproduced Record, S.R.R. p 252 beginning on line10 to S.R.R. p 255 line 8 and S.R.R. p 269 beginning on line 15 to line 19]. Nor did the Commission mention

Wolfgang's claims regarding Whistleblower Law and the First Amendment and remedies thereto.

By cutting short the pre-established procedures, the hearing as previously set forth by the Commisssion, the Commission did not provide opportunity for Wolfgang to question expert City representatives to obtain and present material evidence, and to acquire documents in the possession of the City, necessary for a full and complete record.

The Civil Service Commission's February 2, 2006 ORDER prevented Wolfgang from obtaining proposed evidence and testimony concerning City practices with respect to pension benefits, City policy regarding the absence of second job/outside employment restrictions of Civil Service employees, clarification of and additional testimony regarding benefits and pay rates, and to obtain the appointment records of Project Engineers and Project Managers as related to vacancies that Wolfgang should have been reinstated under provisions of the Civil Service Act, Section 20.1. A complete record including evidence of this nature is needed by the Commission for fact finding necessary to draw appropriate conclusions of law. The plan to obtain this information was outlined in Wolfgang's "Position Paper" pp. 33 to 36.[21]

The Commission dismissed Wolfgang's appeal citing only "that Mr. Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 180

(Pa.1999)", (page 1 and page 4 of their Findings of Fact and Conclusions of Law). There was no mention of the Whistleblower nor the Constitutional issues raised by Wolfgang.

On February 28, 2006 Wolfgang appealed the Civil Service Commission's dismissal of his appeal for reinstatement with full back pay, to the Allegheny County Court of Common Pleas. Paragraph item 6 of the Notice of Appeal alleged "The record is not full and complete because the hearing was not completed after submission of the "Position Paper" as the Commission had earlier set forth on July 7, 2005 the steps in the schedule...". Furthermore the Notice of Appeal alleged findings not consistent with the testimony taken during the portions of the proceedings which were conducted, that the findings capriciously disregarded the evidence, and that the findings are ambiguous and erroneous. Paragraph item 7 of the Notice of Appeal states the alleged unlawful acts of the City to include violations of "the Civil Service Act, the Whistle Blower Law, Wolfgang's First and Fourteenth Amendment Rights, and other laws, which the City willfully violated with malicious intentions, ...". Paragraph item 9 of the Notice of Appeal contains fourteen pages enumerating the erroneous statements and misrepresentations made by the Civil Service Commission. The appeal was premised on the same violations carried through to the Pennsylvania Supreme Court for which the Court had granted Petition for Allowance of Appeal October 3, 2000-

with two exceptions. There was a new claim relating to due process stemming from the Commission's February 8, 2006 dismissal without completing their hearing as they had previously set, and, second, Wolfgang reiterated the issue of ongoing retaliation each time the City did not reinstate him in conformance with the General Civil Service Law, Section 20.1.[22]

Briefs were Ordered by the Court of Common Pleas of Allegheny County. Wolfgang cited the applicable remedies of the General Civil Service Law, the Whistle Blower Law, the United States Code, Chapter 21, Subchapter I, Sections 1983 and 1988 and the City of Pittsburgh Municipal Pension Act in support of his demands for reinstatement with full back pay plus expenses and attorney fees at pp. 50 to 62 of the Brief.[24] The Brief also included detailed calculations of full back pay and pension damages, and out of pocket expenses as Exhibits, (roman numerals), I, II, IIA, X, XVII, XXIII.[25]

The Court of Common Pleas of Allegheny County held argument in the Judges Chamber on July 24, 2006.

On July 27, 2006 the Court of Common Pleas of Allegheny County issued MEMORANDUM and ORDER OF COURT affirming the Civil Service Commission's dismissal of Wolfgang's appeal. The MEMORANDUM, [on p 2], claims "The Commission then conducted a full evidentiary hearing on the

matter." and then the Court relied upon that claim of a full evidentiary hearing being conducted to establish the Courts standard for review:

> "Where a full and complete record is made of the proceedings before a municipal civil service commission a reviewing court must affirm the adjudication unless it is in violation of the constitutional rights of the appellant or not in accordance with law, the procedural provisions of the local agency law are violated or a finding of fact of the commission necessary to support its adjudication is not supported by substantial evidence."

No comment regarding the Whistle Blower Law nor the Municipal Pension Fund Act, Constitutional provisions, and 42 US Code 1983 and 1988 questions were issued.

August 9, 2006 Wolfgang appealed to the Commonwealth Court of Pennsylvania. Question 5.a., of the Statement of Questions Involved, contained within the Brief for Appellant inquires: "Did the Civil Service Commission's unannounced modification to the Commission's pre-established conduct of the hearing preclude employees, [Wolfgang], right to opportunity for pertinent testimony?" The issues regarding remedies of the General Civil Service Law, the Whistle Blower Law and the United States Code, Chapter 21, Subchapter I, Sections 1983 and 1988 and the City of Pittsburgh Municipal Pension Fund Act, in support of his claim for reinstatement with full back pay plus expenses,

pension benefits and attorney fees were reiterated in the questions presented. (See Brief for appellant, p. 4, STATEMENT OF QUESTIONS INVOLVED).[26]

The Commonwealth Court of Pennsylvania filed MEMORANDUM OPINION and ORDER February 20, 2007 which affirmed the Court of Common Pleas of Allegheny County July 27, 2006 ORDER.

Based on page 6 and 7, of the MEMORANDUM OPINION, the Commonwealth Court of Pennsylvania's review of the questions raised by Wolfgang were narrowed by the Court as they stated: "The City also contends that various legal theories raised by Wolfgang are outside this court's jurisdiction because Wolfgang did not, and could not, raise them before the Commission." and later;

> "We agree with the City that this appeal is limited to those issues properly raised before and decided by the Commission. Pa. R.A.P. 1551(a). Here, as agreed to by the parties, the only matter decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. This court is limited to determining the appropriateness of that relief."

And on page 10 the Commonwealth Court states;

> "Beginning with the City's "real" reason for maliciously terminating Wolfgang, Wolfgang

> charges that the City violated his rights under the First Amendment and the Whistleblower Law, pursued an unnecessarily vexatious fifteen-year litigation and continues to persecute Wolfgang and engage in cover-up tactics." "As previously discussed, these matters are not before us."

The Commonwealth Court's MEMORANDUM OPINION stated: "We note that nothing in the Supreme Court's remand Order expressly directs that Wolfgang be reinstated or that he be awarded back pay or any other damages." Five cases cited to support affirmation of the Civil Service Commission's dismissal however did include reinstatement with various calculations being used to calculate back pay awards. Delliponti v. DeAngelis, 545 Pa. 434, 681 A.2d 1261 (1996), Cornman v. City of Philadelphia, 380 Pa. 312, 111 A.2d 121 (1995), Steiner v. City of Reading, 341 Pa. 164, 19 A.2d 283 (1941), Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943).

On March 21, 2007 Wolfgang Petitioned the Pennsylvania Supreme Court for Allowance of Appeal asking for review of the Commonwealth Court of Pennsylvania and the Court of Common Pleas of Allegheny County affirmation of the City of Pittsburgh Civil Service Commission's dismissal of his, appeal seeking reinstatement with full back pay. The questions presented for review were included in

Section (3) of the Petition for Allowance of Appeal. On p. 11 of the Petition for Allowance of Appeal Wolfgang asks;

> "With respect to the Civil Service Commission's cancellation of a hearing in contradiction to the Commission's prior directions that the hearing would take place; was the Civil Service Commission's Order of February 2, 2006, dismissing Wolfgang's claim for reinstatement with full back pay made under the Fourteenth Amendment due process protections affording fair opportunity to Wolfgang to prove, on the record, the lack of work rules or restrictions that if in existence, would prohibit City employees, including Wolfgang, from Earning second job or outside job pay and benefits in addition to their City job pay and benefits; and was due process under the protections of the Fourteenth Amendment afforded to Wolfgang for inquiry into further clarification and explanation of the value of benefits and wages earned by Wolfgang at the time of his unlawful termination, and the City's concealment of records pertaining to vacancies in positions which Wolfgang should have been reappointed in accordance with the General Civil Serve Law, Act...".

Questions pertaining to applicability, protections and remedies of the Whistleblower Law, General Civil Service Law, and the First Amendment of the United

States Constitution, and 42 USC 1983 and 1988, and the City of Pittsburgh Municipal Pension Fund Act were also set forth in section (3) THE QUESTIONS PRESENTED FOR REVIEW of the petition.[27] Section (8) APPENDIX 3 of the petition included an index of the evidence with specific reference to its location within the record in support of Wolfgang's claims. Copies of portions of the referenced record were also included in this appendix. The appendix included side by side comparison charts of testimony from the record to illustrate the Commission's erroneous and ambiguous findings of fact, some of which are based on speculation and conjecture.

The Supreme Court of Pennsylvania Western District July 18, 2007 ORDER denied the Petition for Allowance of Appeal without reason or comment.

REASONS FOR GRANTING THE PETITION

I. On October 3, 2000 the Supreme Court of Pennsylvania remanded the case to the trial court. Subsequent to the Supreme Court remand the Court of Common Pleas of Allegheny County directed Wolfgang by its April 17, 2003 Order: "That the within matter is remanded to the City of Pittsburgh Civil Service Commission; and that plaintiff is granted leave to petition said Civil Service Commission for hearing and determination."

The proceedings, at the Civil Service Commission were cut short thus depriving Wolfgang the opportunity to present a full case and develop a complete record. This reason by itself should be sufficient to reverse the dismissal of Wolfgang's appeal in the Pennsylvania court system.

II. When the Commission dismissed Wolfgang's appeal the only cited authority was "that Mr. Wolfgang's dismissal was in violation of Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa.1999)", (page 1 and page 4 of the Commissions Findings of Fact and Conclusions of Law).

Wolfgang's appeal had included claims premised on the Pennsylvania Whistleblower Law and the First and Fourteenth Amendments to the United States Constitution and City Pension law matters. The

Whistleblower Law, section 1424.(d) Civil service employees, provides " An employee covered by civil service who contests a civil service action, believing it....may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal." The Common Pleas Court made no specific determination on these matters.

When the Commonwealth Court got the case they too concluded that the only matter decided by the Commission was the proper calculation of damages resulting from Wolfgang's improper dismissal under the Civil Service Act. (See p. 7 of the February 20, 2007 MEMORANDUM OPINION.)

Although the City contends that Wolfgang's unlawful termination was not merely pretext, of an economy reduction, they have never provided a defense, to Wolfgang's Whistle Blower Law action, in accordance with the provisions of that law, Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69, Chapter 25, 43 P.S. 1424.c, which requires the City to prove by a preponderance of the evidence that the City's termination of Wolfgang was for separate and legitimate reasons which are not merely pretextual.

The testing under Garcetti v. Ceballos, United States Supreme Court, 361 F.3d 1168 is satisfied by Wolfgang as, first, his Project Engineer job did not encompass any of the pension matters for which he made reports of wrong doing. The matters were also

of public concern as the pension fund is financed in large part by City and State revenues. The second question; whether the government employer had adequate justification for treating Wolfgang differently can hold true only if the City were to argue Wolfgang was affecting its operation –those operations being the conduct, by the city and its pension board, of making improper pension payments. But the conduct of improper or illegal activity is not within the sphere of efficient and effective governmental operations.

The Supreme Court of Pennsylvania's denial of Wolfgang's Petition for Allowance of Appeal lets Wolfgang's claims with respect to the Constitution, the Whistleblower Law, and the City of Pittsburgh Municipal Pension Fund Law conclude without review by a competent court. The Pennsylvania Supreme Court was obligated to provide a remedy for the violation of a Constitutional Right in both their July 18, 2007 ORDER as well as their October 3, 2000 ORDER. Since 1991 the Pennsylvania court system has played a shell game challenging Wolfgang to bet on which court he must appear. The granting of this Petition for a Writ of Certiorari is necessary to alleviate this incomprehensible, inequitable and unequal treatment by the Pennsylvania Courts.

III. Wolfgang is due reinstatement to Civil Service employment with the City of Pittsburgh because the General Civil Service Law, Act of May 23, 1907, P.L.

206 as amended, Act of June 20, 1947, P.L. 663, 53 P.S. 23454, (section 20.1) specifies that employees terminated for economy reasons are to be reinstated as follows: "Whenever the number of such employees shall be again increased in numbers, or if any vacancies occur, the employees suspended under the terms of this act shall be reinstated to that former class before any new appointees are appointed in reverse order to their suspensions."

The reinstatement requirement of Section 20.1 of held true prior to the October 3, 2000 Pennsylvania Supreme Court Order and it holds true after the October 3, 2000 Order. During the 16 years since Wolfgang's unlawful suspension there has been many new appointees to the positions of Project Engineer, and Project Manager, which are both in the non-competitive class.

Although Wolfgang was not permitted full opportunity, at the Civil Service Commission hearing, to elicit testimony and documents from City experts he did identify by name 3 individuals appointed without first reinstating Wolfgang,[28] [see p 12, item 41 and p 13, item 44 of position paper] Evidence in the form of the City's own writings supported the claims of instances where new appointees to Project Engineer and Project Manager had occurred without first reinstating Wolfgang. [see position paper Exhibit S which is excerpt of the 2005 City budget indicating creation of both Project Engineer and Project Manager positions within the

Public Works department where none existed in 2004, and Exhibit L which is City writings documenting appointment of a new appointee to the position of Project Engineer on July 27, 1992.] The City has covered up other instances, of Section 20.1 violations, by withholding information Wolfgang has repeatedly requested regarding new appointees to these two positions.[29] The Civil Service Commission was made aware of this in Wolfgang's "Position Paper", as was each successive Court in Wolfgang's appeals. The Commission and the Pennsylvania Court System is condoning the City's ongoing and perpetual retaliation against Wolfgang. The only opportunity for relief lies with the United States Supreme Court.

The cases, cited in the Commonwealth Court of Pennsylvania's February 20, 2007 MEMORANDUM OPINION, (pp. 8 and 9), included reinstatement of improperly terminated employees as a common feature: Cornman v. City of Philadelphia, 380 Pa. 312, 111 A.2d 121 (1995), Steiner v. City of Reading, 341 Pa. 164, 19 A.2d 283 (1941), In Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943), Delliponti v. DeAngelis, 545 Pa. 434, 681 A.2d 1261 (1996).

A consistent, routine, and common remedy is reinstatement of the improperly terminated employee. Wolfgang believes he is due reinstatement as well.

The October 3, 2000 Order of the Pennsylvania Supreme Court provides for proceedings in Wolfgang's case to be consistent with the Court's decision in Sadowski v. City of Pittsburgh, 741 A.2d 180 (Pa. 1999). There is no reason to believe that the Pennsylvania Supreme Court's October 3, 2000 Order taken with its citation in Sadowski, intended straying from their doctrine of plain or clear meaning to plain language in their order relating to Wolfgang. Review of the Sadowski OPINION reveals at least seven instances where the Court discusses or reiterates the plain meaning or intentions of plain language; Line 2 of p 6, line 5 of p 6, line 17 of p 6, line 11 of p 7, line 13 of p 7, line 6 of p 8, and line 6 of p 9. When the Pennsylvania Supreme Court says the Wolfgang case is to be resolved in accordance with Sadowski, whereat they sustained the Common Pleas Court Order reinstating her to position with full back pay, there is no reason to believe they meant other than the clear meaning of that plain language. The Common Pleas Court Order in Sadowski was a plain language single sentence Order:

> "AND NOW, to wit, this 14 day of March, 1997, it appearing to the Court that the Civil Service Commission of the City of Pittsburgh did not have sufficient substantial evidence to support the termination of Elaine Sadowski, Appellant in the within captioned case, it is ORDERED and DECREED that Appellant, Elaine Sadowski is

hereby reinstated to her position with full back pay." [S.A. 260 of 1996]

The Whistleblower Law, Act of December 12, 1986, P.L. 1539 No. 69 Chapter 25, 43 P.S. 1425., provides for reinstatement of the employee as follows: "Enforcement A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee....". Wolfgang believes the actions of the City of Pittsburgh are egregious enough to warrant his reinstatement and restoration of his benefits and seniority.

IV. Award of back pay is authorized in the Whistleblower Law, Act of December 12, 1986, P.L. 1539, No. 69 Chapter 25, 43 P.S. 1425.

The Common Pleas Court in Seltzer v. City of Reading, 30 A.2d 177 (Pa. Super. 1943) directed damage calculation for the full amount of his back pay, with interest, less amount of his earnings in other employment during the period of Selzer's improper discharge. This Judgment was affirmed on appeal. Wolfgang's calculation of back pay with interest, [projected through January 1, 2006: $2,215,341], was submitted at the Civil Service Commission hearings and also contained in his position paper as Exhibit, [roman numeral I]. The Commission could have easily used this amount for deducting earnings in other employment which the City and the Commission claimed to be $618,072.09.

[see page 2, line 6 of the Commission's February 2, 2006 Findings of Fact and Conclusions of Law.] The difference being $1,597,268.91 due Wolfgang.

The Supreme Court in Seltzer v. City of Reading, 340 Pa. 573, 17 A.2d 872 (1941), considered Seltzer who had been discharged summarily and placed in another position in the City service at a greatly reduced salary. Here Seltzer was working for the city and there was no consideration as to whether or not Seltzer had a second job outside of the City. The Order was for reimbursement of the difference between the salary which he received, (from his lower paying City job), and that to which he is entitled, (at his rightfully due higher paying City Job). Using this reasoning in the instant matter where the City failed to mitigate damages by reinstating Wolfgang, which they were obligated by the General Civil Service Law section 20.1, results in an award of back pay. The difference between Wolfgang's full back pay calculation, $2,215,341, and the amounts the City already paid Wolfgang since his unlawful termination, $0.00, is $2,215,341. Although the City had opportunity and was obligated by the Civil Service Law to reinstate Wolfgang, and to have paid him significantly more than $0.00, the City chose not to.

In the Sadowski case, 741 A.2d 180 (Pa. 1999), [SA 96-260], where whistleblower retaliation and First Amendment infringements were not at issue in the Pennsylvania Supreme Court OPINION, Sadowski

was ultimately awarded $130,032.20. The OPINON identifies Sadowski's yearly pay, on p 2, as $37,000. The OPINION also identifies Sadowski's improper termination as December 31, 1996. The November 2, 2000 Common Pleas ORDER OF COURT making the award occurred less than four years after Sadowski's firing. Based on the stated pay, over 3 and ½ years pay was included in the full back pay calculation. Wolfgang's back pay calculation should be based upon a similar calculation; annual pay rate for 16 years, with the additional award for items authorized in the whistle blower law and as appropriate for Constitutional violations including restoration of benefits, seniority, interest, expenses and attorney fees for the periods of time during which Wolfgang had professional representation.

CONCLUSION

The Petition for a Writ of Certiorari should be granted along with summary and immediate reinstatement of Wolfgang to employment with the City of Pittsburgh as a Project Engineer if not the higher position of Project Manager. This could be the first step to providing a remedy with relationship to the violations. A plenary review should also be performed to determine back pay, pension eligibility, attorney fees and restoration of seniority and benefits.

To sustain Wolfgang's unlawful termination without compelling job reinstatement and meaningful fair recompense is to condone a circumventing route around the protections afforded by the First Amendment.

Respectfully submitted:

Ray Wolfgang, pro se
1702 Meadville St.
Pittsburgh, PA 15214
412-322-0548